



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 6, 1962

Mr. F. A. Taylor
County Auditor
Brazoria County
Angleton, Texas

Opinion No. WW-1346

Re: Payment of claims for
equipment, materials and
supplies used in construc-
tion of county roads, and
related questions.

Dear Mr. Taylor:

Your request for an opinion asks the following ques-
tions:

"(1) Upon the refusal of the County Road Administrator to certify that the equipment, material, and supplies have been received, and that the charges made for the same are correct, can I, as County Auditor, pay the bills even if ordered to do so by the Commissioners' Court?

"(2) What are my duties with reference to investigation to determine whether or not these bills are proper and that the County did in fact receive the material, equipment, and supplies?

"(3) Can the Commissioners' Court of Brazoria County under the Optional Road Law act as a fact-finding body and certify the facts to me that the equipment, material, and services were delivered and performed and that the charges for the same are correct when the County Road Administrator refuses to make such certification on the grounds that he has no information available upon which to base such certification, and such equipment, materials and supplies were not ordered, authorized, or ratified by him?

"(4) After the recent 'Hurricane Carla' the Federal Government granted Brazoria County a specific sum of money for the alleviation of hardship, public health, and the restoration of bridges, roads, and highways. When bills are incurred under this Grant, whose duty is it to certify to me the facts necessary to show that the particular services

and materials come under this Grant and Aid when the County Road Administrator refuses to do so on the ground that he has no knowledge of the goods having been delivered or the materials having been furnished or the labor having been performed?"

The statutes of this State confer the powers to build and maintain the county roads upon the commissioners court and the commissioners court in discharging its duty must consider the needs of the county as a whole. Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451 (1948); Stovall v. Shivers, 129 Tex. 256, 103 S.W.2d 363 (1937); Guerra v. Rodriguez, 239 S.W.2d 915 (Civ.App. 1951). In Guerra v. Rodriguez, supra, it was held:

"Article 2351, Vernon's Ann.Civ.Stats., places general control over all county roads in the Commissioners' Court, but various statutes have provided special methods by which the court may perform or delegate these functions. Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451, 457. (1) It may let the work on contract to independent contractors. Art. 6753 Vernon's Ann.Civ.Stats. (2) It may appoint an overseer for each road precinct and designate all hands liable to work on public roads. Arts. 6718-6736, 6739, 6755. (3) It may employ not more than four road commissioners. Arts. 6737-6742. (4) It may appoint a road superintendent for the county or one for each precinct. Arts. 6743-6761. (5) Provided the county has forty thousand inhabitants, the members of the Commissioners' Court shall be ex-officio road commissioners of their respective precincts. Art. 6762. (6) It may employ a County Road Engineer with broad statutory powers in the event the county by an election determines to adopt the Optional County Road Law of 1947. Art. 6716-1."

In Dunbar v. Brazoria County, 224 S.W.2d 738 (Civ.App. 1949, error ref.), the court, in considering the question of whether the county road engineer of Brazoria County, employed pursuant to the Optional Road Law adopted by Brazoria County, was a public officer, stated:

"After the hearing of the charges against appellant, the Commissioners Court entered an order removing him from the office of County Road Engineer.

"Article 6716-1, Vernon's Annotated Civil Statutes, Acts 50th Legislature, 1947, Chapter 178, page 288, authorizes the employment of a County Road Engineer to have general supervision of the roads of a county, if the provisions of the statute are adopted by a majority vote of its qualified voters.

"Sections 1 and 2 of the Article are not, we think, material to the consideration of the instant case. Section 3 of said Article vests the construction and maintenance of county roads in the county road department and provides that it shall be composed of the Commissioners Court 'as the policy-determining body' the County Road Engineer 'as the chief executive officer,' and other administrative personnel and road employees.

"Section 4 of said Article provides that the administration of the road department shall be on the basis of the county as a whole without regard to Commissioners' precincts.

"Section 5 provides that: 'The County Road Engineer shall be appointed by the Commissioners Court. He shall be a licensed professional engineer, experienced in road construction and maintenance, who shall meet the qualifications required by the State Highway Department for its county engineers.'

"Section 6 provides for salary of not to exceed \$7200 per year, the exact amount to be determined by the Commissioners Court, out of the road and bridge fund of the county.

"Section 7 provides that: 'The County Road Engineer shall hold his position for an indefinite term and may be removed by a majority vote of the Commissioners Court. Removal shall not become effective until thirty (30) days after he shall

have been notified in writing of the intention of the Commissioners Court to remove him, and until after a public hearing on the question of his removal shall have been held, if such a hearing is requested by of the Commissioners Court in writing by the County Road Engineer.'

"Section 8 provides that in the absence or inability of the County Road Engineer to perform his duties, the Commissioners Court may designate a qualified administrative officer to perform these duties during such absence or inability.

" . . .

"From an analysis of said Article 6716-1, it is, we think, apparent that the legislature intended in enacting the Statute to make the County Road Engineer a member of the administrative personnel of the County Road Department and not an officer as contemplated in Article 16, Section 30 of the Constitution of this State.

"The Article provides that the County Road Engineer shall hold his position for an indefinite term and that he may be removed by a majority vote of the Commissioners Court."

It is apparent from Dunbar v. Brazoria County, supra, that the construction and maintenance of county roads under the Optional Road Law is vested in the commissioners court.

In Attorney General's Opinion O-6506 (1945), it was held:

"Where supplies have been purchased under contract by the commissioners' court or under emergency requisitions authorized by the commissioners' court, the functions of the county auditor with respect to such purchased are defined in Articles 1660 and 1661, Vernon's Annotated Civil Statutes. Under the provisions of said Articles the County Auditor's function is to examine 'all claims, bills and accounts against the county' (Art. 1660) and 'he shall not

audit or approve any such claim unless it has been contracted as provided by law, nor any account for the purchase of supplies or materials for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge. Said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made.' (Art. 1661).

"With reference to the matter of requisitions, Article 1661 clearly states that requisitions are to be signed by the officer making the purchase and approved by the county judge. We find no authority for the county auditor to require, as a prerequisite to approval of a claim based on such purchase, that the requisition shall be signed or approved by him when the purchase is made.

". . .

"Although the county auditor has general oversight over the finances of the county, the exercise of such oversight with reference to purchases made and expenses incurred for the use of the county or by certain officers in the conduct of their offices, is defined and controlled by the specific provisions of the statutes pertaining to such purchases and expenses. In view of the foregoing and in view of the facts given, it is the opinion of this department that the county auditor is not authorized to require, as a prerequisite to his approval of a claim or items of expense, that all requisitions for such purchases or expense items shall be signed or approved by him at the time the purchase is made or the expense incurred."

In Attorney General's Opinion WW-1328 (1962), it was held:

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"Attorney General Opinion V-1111 (October 3, 1950) construed the duties of the county auditor to examine and approve claims in connection with expenses of visiting district judges. We believe that the facts of the opinion are sufficiently in point for it to be relevant.

"Article 1660, Vernon's Civil Statutes, requires that no claim, bill or account shall be allowed or paid by the commissioners court until it has been examined and approved by the county auditor. Section 10 of Article 200a provides that when district judges are assigned to districts other than their own, they shall receive actual expense for travel and subsistence which shall be paid out of the General Fund of the county in which their duties are performed, upon accounts certified and approved by the presiding judge of the administrative district.

"The opinion held that expense accounts of the visiting district judge are subject to audit by the county auditor from a 'bookkeeping standpoint,' but such audit is not to be construed so as to authorize a county auditor to review the legality of items of expenditure contained in the expense account when the same has been certified and approved by the presiding judge of the administrative district."

In view of the foregoing authorities, it is our opinion that the Commissioners Court of Brazoria County is the fact-finding body to determine whether equipment, material and services were delivered to the county, and the reasonable value of such equipment and services.

It is our further opinion that the county auditor is required to pay bills if Articles 1660 and 1661, Vernon's Civil Statutes, are complied with.

This opinion is not to be construed as passing on any fact question. Such questions must be determined by the Commissioners Court of Brazoria County.

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The Commissioners Court of Brazoria County is the fact-finding body to determine whether equipment, material and services were delivered to the county, and the reasonable value of such equipment and services.

The county auditor is required to pay bills if Articles 1660 and 1661, Vernon's Civil Statutes, are complied with.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *John Reeves*
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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